CHAPTER ONE

THE SECURITY COUNCIL AND THE PRINCIPLE OF LEGALITY

1.1 Introduction: The United Nations Security Council in the Post-Cold War era

The year 1990 is commonly used to mark the end of the ideological race that was the Cold War, in which East and West walked the tightrope of mutually assured deterrence. The rivalry between the superpowers, the United States and the Soviet-Union, dictated the agenda of the United Nations and in many cases the actions it could take. The UN system of collective security, which showed considerable improvement over that under the League of Nations, was designed to operate effectively only when the so-called Great Power unity forged in the preceding World War was preserved within the Security Council.\(^1\) However, Cold War animosity combined with the veto power of the permanent members of the Security Council greatly restricted its ability to function.\(^2\)

The permanent members of the Security Council were inclined either to protect their own vital interests in certain situations, “have a reflex reaction to oppose the other superpower’s voting intentions”,\(^3\) or to court other states in a continuous attempt to tip the balance of political power.\(^4\) Yet, to state that the Council or the

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1 Murphy (1994: 256) describes the UN collective security system as a mix between the League of Nations system and the older Concert of Europe formula (Murphy 1994: 252-272); Howard (1996: 65); In general, see Luard (1982: Chapters 2 and 3, 17-68).
2 See e.g. White (1997: 8-23).
3 Id., 10; Roberts, Kingsbury (1996: 39).
4 The Soviet Union, for instance, consistently sided with Third World countries and supported anti-colonial tendencies, as it did in the Indian invasion of Goa (1961): White, see note 2 above; Luard (1989: 324). While the superpowers recognised each other’s sphere of influence, siding with those nations that condemned intervention in the opposing sphere could be beneficial for future relations, as was the case with the Soviet invasion of Hungary (1956). White (1997: 13); Luard (1989: 72). Both superpowers
entire UN was in a permanent state of paralysis in the field of international peace and security is an exaggeration.\textsuperscript{5} Through public diplomacy by the Security Council and in co-operation with the underestimated diplomatic efforts of the Secretary-General, the Council achieved some success in settling disputes peacefully. The Council acted, albeit in dubious circumstances, to take military enforcement action in Korea (1950). Moreover, the General Assembly invoked the Uniting for Peace resolution\textsuperscript{6} in the 1956 Suez crisis and 1961 Congo case, taking over these matters from the Security Council, and introduced the concept of ‘peacekeeping’. Influenced by the period of decolonisation, the Council expanded its membership from 11 to 15 in order to reflect the influx of new states onto the world stage and to ensure equitable representation on the Council.\textsuperscript{7} Furthermore, the Council applied sanctions more or less successfully in the cases of Southern Rhodesia (1966-79) and South Africa (1977). Although tensions initially rose at the end of the 1970s and early 1980s, new Soviet policies in the 1980s led directly to the downfall of communism, the end of the Cold War and the dismantling of the Soviet Union and its empire.\textsuperscript{8} By reversing the Iraqi invasion and occupation of Kuwait of August 1990, it was thought that the United Nations would become the forum in which conflicts among nations would be either prevented or resolved and that the Security Council and the system of collective security were reborn.

However, optimism and heightened activism\textsuperscript{9} by the Security Council lasted only until October 1993.\textsuperscript{10} Whereas the Iraq-Kuwait crisis was a conflict between states, the new threats to international peace and security since the 1990s have often arisen from internal and ethnic conflicts, such as in the former Yugoslavia, Haiti and in Africa and, arguably, acts of terrorism since 2001. The Council interpreted and allegedly expanded its constitutional powers into fields of human rights, international criminal justice, democratic governance and international terrorism. Furthermore, it introduced new forms of peacekeeping, such as peace-enforcement and nation building. In the absence of agreements under Article 43 of the

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6 UNGA Resolution 377 (V), 3 November 1950.